

Appl. No. 10/528,082
Amdt. dated May 19, 2008
Reply to Office Action of January 17, 2008

PATENT

REMARKS/ARGUMENTS

The Specification has been revised to include reference to prior application PCT/US04/29671 in compliance with 37 C.F.R. 1.78(a). The claim of priority was previously submitted in the application transmittal letter filed March 14, 2005.

Claim 1 has been revised to use alternative phrasing to encompass the intended method of inducing an immune response and to feature the particular components of the administered particles. Additionally, the last "whereby" clause in claim 1 has been removed in favor of its re-presentation in new claim 16.

Support for the revisions is found throughout the application and in the claim as originally filed. For example, support is present in the specification at least in the paragraphs bridging pages 8-9 and pages 9-10; on page 10, second full paragraph; in the descriptions of Figures 1 and 2 on page 11; and on page 13, first and second full paragraphs; .

Claims 2-5 have been revised to be consistent with the changes to claim 1.

Claim 8 has been revised to be in independent form, with inclusion of all features of claim 1 as previously presented.

Claims 9-15 have been canceled without prejudice for re-presentation in a continuing application.

New claims 17-26 have also been introduced. Support for new claims 17 and 19-22 is found at least in the passages supporting revised claim 1 and on page 16, Example 2. Support for new claim 18 is provided at least by claim 8 as previously presented. Support for new claims 23-26 is found at least in Figure 2 and its description on page 11.

No new matter has been introduced, and entry of the above revised claims is respectfully requested.

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Alleged Rejection under 35 U.S.C. § 112, second paragraph

Claim 3-5 were rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite due to recitation of the terms "derived" and "tumor-derived".

As presented above, the claims no longer include the use of these terms and so no issue of indefiniteness remains. Reconsideration and withdrawal of this rejection is respectfully requested.

Alleged Rejection under 35 U.S.C. § 102

Claims 1-7 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Hiserodt et al. (USP 6,277,368). Applicants have carefully reviewed the statement of the instant rejection as well as the cited document and respectfully traverse because no case of anticipation is present.

It is well settled law that anticipation requires identity between a claimed invention and a cited prior art document.

But in the instant case, Hiserodt et al. fail to teach or suggest a method including the administration of a virus or virus-like particle as featured in the revised claims. The particles are released from cells and "acquire" the immune stimulatory properties of the cells. It is these particles *per se* (and without the cells) that are able to induce immune responses against a tumor antigen in the context of a costimulatory molecule.

In sharp contrast, Hiserodt et al. report the use of tumor cells, tumor cell lines, or tumor extracts. So while Hiserodt et al. report the use of viral vectors to produce these materials, they are not the same as the particles featured in the pending claims.

Therefore, Hiserodt et al. cannot anticipate the claims, and this rejection may be properly withdrawn.

Non-rejected subject matter

Claim 8 was **not** rejected expressly as part of any rejection of record. Therefore, Applicants believe that it contained allowable subject matter. So claim 8 has been revised to be in independent form, including all features from claim 1 as previously presented, to distinguish it from the revised claims.

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Applicants respectfully point out that the indication of claim 8 as "rejected" on PTOI-326 fails to provide actual notice as to the actual basis, or bases, under which the claim might have been rejected. Additionally, the actual statements of the rejections failed to mention or indicate the features specific to claim 8 so that Applicants could understand the claim to be included within the scope of any rejection.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned.

Respectfully submitted.


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